



**CITY OF KIRKLAND**  
**PLANNING AND BUILDING DEPARTMENT**  
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## **MEMORANDUM**

**DATE: FEBRUARY 18, 2016**

**TO: INTERESTED PARTIES**

**FROM: ERIC SHIELDS, AICP  
DIRECTOR, PLANNING & BUILDING DEPARTMENT**

**SUBJECT: DIRECTOR GUIDANCE – CRITICAL AREAS ORDINANCE AMENDMENTS AND PRIOR APPROVALS**

The City of Kirkland is currently working on updates to Kirkland Zoning Code (KZC) Chapter 90, which includes City regulations for streams and wetlands. The amendments are required by the Growth Management Act and must be based on "best available science" (BAS). Because Kirkland's regulations have not been substantially updated since 1999, we know that our current buffering standards for streams and wetlands generally are not consistent with BAS and will need to be increased. The City anticipates adoption of new regulations sometime after August 1, 2016.

Applicants have requested guidance on how the Planning and Building Department will process applications that are pending or approved prior to adoption of the new regulations. The guidance provided in this memo is primarily based on existing City regulations. Vesting ("grandfathering") provisions from State statutes are also noted.

### **Applicable City Regulations**

KZC Chapter 90 currently contains the following provision:

#### 90.165 Setbacks and Buffers Required by Prior Approvals

If, subsequent to October 2, 1982, the City approved a variance, planned unit development, rezone, or zoning permit through Processes I, II, IIA, or IIB, as described in Chapters 120, 125, 130, 145, 150, and 152 KZC, respectively, and/or a subdivision or short subdivision for the subject property with established setbacks or buffers on the subject property from a stream or wetland, those setbacks or buffers shall apply to the original construction on the subject property. All of the provisions of this chapter which do not directly conflict with the previously imposed setback or buffer requirements shall fully apply to the subject property.

### **Guidance on Frequently Asked Questions**

Based on KZC 90.165, the Department provides the following guidance to current and potential applicants:

**1. What if I have an application that is currently approved or will be approved prior to adoption of the update?**

For any of the application types noted in KZC 90.165 that are approved prior to adoption of the updates, the approved buffers (either those that meet the buffer standards in effect at the time of approval or have been approved at a width less than the standard buffer) apply to original construction. Note that all permit approval types noted in KZC 90.165 have specific lapse of approval dates and KZC 90.165 does not apply to lapsed (expired) approvals. Any permit that has lapsed would be reviewed pursuant to the regulations in effect at the time of a new application.

**2. What does “original construction” mean?**

“Original construction” refers to construction of the specific development/construction that was approved by the land use permit. It also means that the approved buffer only applies to that specific construction and not to future additions, modifications, expansions, etc. For approved subdivisions where specific homes were not part of the approval, “original construction” refers to construction of a home (or homes) on the lots that were approved subject to the buffers that were approved. After original construction has been completed, any future construction would be subject to regulations in effect at the time of that future construction.

**3. Will the City approve my land use application prior to the effective date of the new regulations?**

If you intend to apply for one of the land use applications noted in 90.165, please be aware of the following timeframes.

- A presubmittal meeting is required prior to submittal of a land use application. Presubmittal meetings are scheduled at least two weeks out from the date of application.
- The KZC provides that the City has 28 days after submittal to determine whether an application is complete.
- After being determined to be complete, most land use applications take at least four months to receive an approval.
- While staff does not currently know specifically when the KZC update will be finished or what the effective date will be, we can say that the earliest effective date would be early August 2016.

If you have a pending application with the City, please discuss the project timing with your assigned planner. You may wish to submit a complete building permit application (see reference to State laws below) even if your land use permit is not approved.

**4. What if I don’t have an approved land use application prior to the effective date of the new regulations?**

KZC 90.165 only pertains to approved applications. Additional rules related to vested rights may be found in State law. While City staff is not in a position to provide you with legal advice, we can direct you to the relevant Washington State statutes that specifically address vesting with respect to complete building permit applications and complete subdivision applications:

- RCW 19.27.095 provides that “A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.” Please reference the complete statute to understand the requirements contained therein.
- RCW 58.17.033 provides that “A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.” Please reference the complete statute to understand the requirements contained therein.

Beyond this direction, you may wish to discuss your situation with private legal counsel.

**5. If my application is not approved prior to the effective date, can the City adopt updated regulations that contain similar provisions to the current KZC 90.165?**

The City could adopt provisions similar to KZC 90.165 with the updates to KZC Chapter 90. If you are interested or concerned about an application, you are encouraged to participate in the process to let the Planning Commission and City Council understand your interests.

**Conclusion**

Existing City regulation KZC 90.165 provides some certainty around how approved applications will be treated. Additional guidance is found in State statutes that address complete building permit and complete subdivision applications. If your application does not fall into one of these areas prior to adoption of the updated regulations, the City’s position is that the application would not be vested and would be subject to the updated regulations. If you need additional advice, we encourage applicants to consult with their legal counsel.

Please get involved in the process to update the regulations by visiting the project webpage and signing up for E-mail alerts at:

[www.kirklandwa.gov/depart/planning/Code\\_Updates/Projects/Wetlands\\_and\\_Streams\\_Code\\_Amendments.htm](http://www.kirklandwa.gov/depart/planning/Code_Updates/Projects/Wetlands_and_Streams_Code_Amendments.htm)